IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 35869 of 2004(T)

PETITIONER:

1. C.M.FRANCIS, SECRETARY,
   THRISSUR GENERAL WORKERS UNION (CITU),
   RICE BAZAR, THRISSUR.

2. P.V.SUBRAMANIAN, PRESIDENT,
   GENERAL MAZDOOR SANGH, SHORANUR ROAD,
   THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

1. THE DISTRICT LABOUR OFFICER,
   THRISSUR.

2. THE ASSISTANT LABOUR OFFICER,
   I CIRCLE, THRISSUR.

3. THE CHAIRMAN, THE KERALA HEADLOAD
   WORKERS WELFARE BOARD, THRISSUR LOCAL COMMITTEE,
   JAI HIND BUILDING, THRISSUR-1.

4. P.Y.AGASTI, PALLIPURATHUKARAN HOUSE,
   VADOOKKARA P.O., THRISSUR.

5. ROBERT.K.E., KANJIRATHINKAL HOUSE,
   VADOOKKARA P.O., THRISSUR.

6. K.I.PAULSON, KUTTIKADAN HOUSE,
   ANCHERY P.O., THRISSUR.

7. P.D.ABI, CHEMBUKKAVU HOUSE,
   BROTHERS LAND, THRISSUR.

8. DANY.K.A., KURUTHIKULANGARA HOUSE,
   PULLAZHI P.O., THRISSUR.

9. JAISON PAUL, CHACKALLAKKAL HOUSE,
   KUTTANELLUR P.O., THRISSUR.

BY ADV. SRI.PAULSON C.VARGHESE
SRI.K.A.SREEJITH
SRI.C.D.DILEEP
SRI.BABU KARUKAPPADATH, SC,KHLWWB
SRI.T.G.RAJENDRAN
SRI.KOSHY GEORGE, SC, KHLWWB
G.P. SHRI.T.T.MUHMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/10/2007, ALONG WITH WPC NO. 32659/05 THE COURT ON 31.10.2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE ORDER DTD.23.7.01 BY R2.\

P2. COPY OF THE ORDER DTD.6.9.01 BY R1.

P3. COPY OF THE LETTER DTD.6.11.02 BY R3 TO R2.

P4. COPY OF THE ORDER DTD.17.11.01 BY R2.

P5. COPY OF THE APPEAL BEFORE R1 DTD.30.3.03.

P6. COPY OF THE ORDER DTD.30.10.2004 BY R1.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).Nos.35869/2004 & 31548/2005

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Dated this the 31st day of October, 2007

J U D G M E N T

In these two writ petitions two sets of workers are at loggerheads regarding registration of new workers under Rule 26A of the Kerala Headload Workers Rules and Paragraph 6A of the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, in Pool 12A of Sakthan Thampuran Fish Market area at Thrissur. Petitioners in W.P(C).No.35869/2004 are office bearers of two unions representing 14 workers who are existing headload workers of Pool No.12 A of the local committee working in Sakthan Thampuran Fish Market, Thrissur. They challenge orders granting registration under Rule 26A of the Rules to seven workers claiming to be working under certain individual employers. Petitioners in W.P(C).No.31548/2005 are four workers, who claim to be working under individual employers claiming registration under Rule 26A of the Rules and

paragraph 6A of the Scheme as attached workers of those employers.

2. The four workers along with three other workers originally applied for registration under Rule 26A of the Rules. The Assistant Labour Officer (ALO) 1st Circle, Thrissur, sought opinion of the third respondent-Chairman of the Kerala Headload Workers Welfare Board, Thrissur Local Committee as to whether registration can be granted to them. The Chairman of the local committee, by letter dated 6.11.2001, informed the ALO that the Board has decided not to issue identity cards to any new workers and that it is not necessary to increase the number of headload workers in Sakthan Thampuran Fish Market. While the matter was thus pending, it appears that the ALO received a letter dated 19.7.2001 stated to have been written by those workers who applied for registration under Rule 26A stating that their application for registration may be dismissed as withdrawn since they had obtained other work and therefore, they do not require any identity cards. Relying on the said letter, the ALO, by Ext.P1 order in W.P(C).No.35869/2004, rejected the application for identity cards submitted by the workers mentioned therein. That

order is dated 23.7.2001. It appears that on 30.7.2001 these workers submitted appeal petitions before the District Labour Officer (DLO), stating that the letter dated 19.7.2001 purported to have been written by them was not actually written by them and therefore, the ALO may be directed to register them under Rule 26A and to issue identity cards. By Ext.P2 order in that writ petition, the DLO entered a finding that on 5.4.2002 the then ALO had conducted an enquiry and he was convinced that those workers were actually working in the area and that identity cards were not issued pending receipt of opinion of the Headload Workers' Board. The DLO, therefore, directed the ALO to reconsider the applications of those workers for registration. Accordingly, by Ext.P4 order, the ALO reconsidered the matter and found that the applicants were working as headload workers in the Sakthan Thampuran Fish Market. On that ground, he allowed the applications filed by the workers, against which, the office bearers of the unions representing 14 existing workers of the area filed Ext.P5 appeal before the DLO who, by Ext.P6 order, dismissed the appeal. The office bearers of the workers representing the 14 workers have therefore filed W.P(C).No.

35869/2004 challenging Exts.P4 and P6 orders of the ALO and DLO.

3. In the meanwhile, six of the workers claiming registration filed Ext.P7 series applications before the Chairman of the Kerala Headload Workers' Welfare Board, seeking registration under paragraph 6A of the Scheme on the strength of the Rule 26A registration which is the subject matter of the other writ petition. The same was rejected by Ext.P10 order of the Chairman of the Thrissur Local Committee of the Kerala Headload Workers' Welfare Board. Their appeal before the DLO, who is the appellate authority, was dismissed by Ext.P11 order. Those four workers are challenging Exts.P10 and P11 orders in W.P(C). No.31548/2005.

4. The existing workers would contend that as per the Kerala Headload Workers Act, Rules and Scheme, no headload worker can work in an area notified under the Scheme unless he gets registration under the Rules and Scheme. Therefore, the very contention that the four workers have been working in the area as attached workers of four employers in the market is patently wrong. They would further submit that out of the five

employers under whom those workers claim to have been employed, one viz., Pottekkad Traders, has closed down business, another named K.R.Bhaskaran is no more, and the other three employers, viz. M/s.P.A.Hassan, K.P.C.Chandran and K.R.Sahadevan, have by Exts.P7, P8 and P9 letters stated that they have never employed the workers who claim registration. They would further rely on Ext.P3 letter of the Chairman of the Thrissur Local Committee of the Kerala Headload Workers Welfare Board, categorically asserting that it is not necessary to issue any more identity cards to headload workers in Sakthan Thampuran Fish Market. According to them, in Ext.P2 order of the DLO, there is no specific finding that the letter stated to have been written by the workers stating that they are not interested in pursuing the applications for registration, is a fabricated one. They would further say that in Ext.P2 the finding is that the ALO had conducted an enquiry and found that the workers claiming registration were working in the fish market. On the other hand, in Ext.P4 order, the ALO states that it is the finding of the DLO that they are working in the Sakthan Thampuran Fish Market. These are contradictory statements which themselves would

prove that there was no specific finding by any authority under the Kerala Headload Workers' Act, Rules and Scheme to the effect that the workers in question are working in Sakthan Thampuran Fish Market, Thrissur.

5. In support of their contention that they are entitled to registration sought for, the workers seeking registration, along with their counter affidavit, produced Ext.R7(j) series of extracts from the employment and acquittance registers stated to have been maintained by the five employers under whom they claim to be working viz., K.P.C.Chandran, Pottekkad Traders, K.R.Sahadevan, P.A.Hassan, and K.R.Bhaskaran. They would assert that they are working as attached workers of the said employers and therefore they are entitled to registration under Rule 26A as well as paragraph 6A of the Scheme.

6. Although no counter affidavit has been filed by the Chairman of the Thrissur Local Committee of the Kerala Headload Workers' Welfare Board, the Advocate appearing for the Board would submit that they stand by Ext.P3 [W.P(C).No.35869/2004] letter written by the Chairman stating that there is no necessity to issue further identity cards to any new workers in Sakthan

Thampuran Fish Market.

7. I have considered the rival contentions in detail.

8. Before going into the merits of the case, I must dispose of a technical raised by the counsel for the workmen seeking registration and identity cards. They would contend that the two unions have no locus standi to challenge the orders in question for two reasons. First is that the Headload Workers Act and Rules do not contemplate objection or claims by any unions and in so far as individual existing workers have not come forward for challenging their registration, the writ petition filed by the office bearers of the unions is not maintainable. They would further submit that the existing workers have no locus standi to challenge registration granted to new workers. As far as the first contention is concerned, although the Kerala Headload Workers Act, Rules and Scheme do not contemplate unions representing the workmen, these workers are also entitled to the benefits under the Trade Unions Act and Industrial Disputes Act. The workmen as defined under the Industrial Disputes Act have a right to collective bargaining through unions representing them. The two petitioners in W.P(C).No.35869/2004 are officer bearers

of unions representing 14 existing workers of the market. The workers seeking registration have no case that these petitioners are not representing the said 14 existing workers and therefore, I do not find any merit in the contention raised that these office bearers of the two unions cannot file writ petition on behalf of the 14 existing workers. The second objection that existing workers have no locus standi to file appeals against the orders granting registration, has been negatived by a Division Bench decision of this court in ***Jnana Prakasam v. Natarajan*** [2002 (1) KLT 39], wherein the Division Bench of this court has held that the words, "persons aggrieved" in Rule 26C of the Kerala Headload Workers Rules, 1992 would include existing workmen and they are entitled to maintain an appeal against an order under Rule 26A. In view of the said Division Bench decision, there is no merit in the second contention also. Therefore, I hold that the writ petition filed on behalf of the existing 14 workers against the orders granting registration and dismissing their appeal is maintainable.

9. Coming to the merits of case, at the outset I must state that the workers seeking registration have no case that the

signatures appearing in the letter dated 19.7.2001 received by the ALO stating that the workers do not want to pursue their applications for registration are not theirs. On the other hand, their contention is that the office bearers of the unions got blank papers signed by them for the purpose of settling the dispute. In the absence of any concrete materials in support of this contention it is very difficult to accept the same on face value. No attempt has also been made by the existing workers to produce or summon that document to prove that the said document is not genuine.

10. Now coming to the orders challenged, Ext.P2 is the order passed by the DLO in the appeal filed by the workers seeking registration. In that there is no specific finding that the letter in question was not submitted by the workmen seeking registration. Without entering a specific finding on that question, the DLO went on to find that on 5.4.2002 the then ALO conducted an enquiry and found that the workers seeking registration were actually working in the area. It is on that premise that the matter was remanded to the ALO for fresh consideration. But after fresh consideration, the ALO had not

specifically entered a finding of his own to the effect that the workers were actually working in the area under the employers in question. On the other hand, he relied on the order of the DLO to find that the DLO has found that these workers are working in the Sakthan Thampuran Fish Market. As such, there is no finding by an authority under Rule 26A to the effect that these workers are working under any specified employer. There is another aspect of the matter also. Under Rule 26A the procedure prescribed requires that on receipt of an application for registration under that Rule, the registering authority shall issue notice in form X to the employer or contractor from whom the headload workers claim work with copy of the application inviting objections, if any, on such application. There is nothing on record to show that such a procedure has been followed. The ALO and DLO have not found it necessary to file counter affidavits in the writ petition challenging the registration also.

11. From R7(a) series produced by the workers claiming registration in support of their claim that they are actually working with the employers mentioned therein, I find that although four extracts of registers are stated to be belonging to

four separate and different employers, the handwriting in all of them are identical, which itself casts considerable doubt over the authenticity of those documents. Added to that, the existing workers have, along with their reply affidavit, produced Exts.P7 to P9 which are declarations by three of the four employers stating that they have not engaged any other workers than those in Poll No.12A. The workers seeking registration have not chosen to controvert those documents by filing any additional affidavit. As such, I am not inclined to accept the contention of the workers seeking registration that they are working under the employers named by them.

12. Further, under sub clause (1) of Paragraph 6 of the Kerala Headload Workers' (Regulation of Employment and Welfare) Scheme, 1983, no headload worker who is not a registered headload worker under the provision of the Kerala Headload Workers Rules shall be allowed or required to work in any area to which the Scheme applies from the date of commencement of the functional operation of Scheme in the area. Further, sub clause (2) of Clause 6 states that from the date of commencement of the functional operation of the Scheme

in any area, no headload worker who is not permanently employed by an employer or contractor shall be allowed or required to work in any area to which the Scheme applies unless he is granted a further registration under the provisions of the Scheme. It is not disputed that the area in question has been notified under the Scheme. The claim of the workers seeking registration is that they are already working in that area even before applying for registration. In view of Rule 6, that contention cannot be countenanced as they cannot, under law, work in the area even before getting registration as contemplated under the Rules and Scheme.

13. Therefore, in any view of the matter, the contentions of the workers seeking registration appear to be not based on any acceptable material on record. Hence the orders which are not supported by any acceptable material cannot be sustained in law. Accordingly, Exts.P4 and P6 in W.P(C).No.35869/2004 are quashed.

14. W.P(C).No.31548/2005 is filed by the workers claiming registration challenging the orders, of the very same DLO who passed the impugned Ext.P6 order in the other writ petition,

rejecting the claim of the very same workers for registration under paragraph 6A of the Scheme. In view of the fact that I have already quashed the order granting them registration under Rule 26A and since only those workers who possess registration under Rule 26A can seek registration under paragraph 6A of the Scheme, this writ petition is liable to be dismissed. Accordingly, W.P(C).No.31548/2005 is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge.